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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Implementation of Section 4(g) of the
Cable Television Consumer Protection
Act of 1992
Home Shopping Station Issues

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MM Docket No. 93-8

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MAR 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF KPST-TV

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SUMMARY

KPST-TV, Vallejo, California (in the San Francisco ADI), has a home shopping format but broadcasts Chinese language programming in prime time from 7:00 p.m. to 10:00 p.m., seven days a week. Half of its Chinese language programming is news and public affairs, much of which is produced by KPST-TV. This service is designed to meet the needs of the Bay Area's Chinese-American population, which constitutes 10% of the total Bay Area population and 20% of San Francisco's population. Without the revenues derived from its affiliation with the Home Shopping Network, KPST-TV could not have commenced operation in 1986 and could not afford to provide the valuable Chinese language service on which the community now relies.

The Commission should define a home shopping station as one devoting more than 50% of its total broadcast hours and more than 25% of its prime time hours to home shopping programming. This definition would not include stations (like KPST-TV) that devote at least 75% of prime time to non-home shopping programming.

The Commission may make a general determination that home shopping stations do serve the public interest. However, it may not make a generalized judgment that home shopping stations do not serve the public interest. An adverse determination as to any particular station could only be made after the Commission

reviewed that station's public service performance. The criteria for judgment should be the same criteria the Commission uses in comparative renewal proceedings to determine whether a licensee has earned a renewal expectancy.

As to the procedure, after the Report and Order in this rulemaking is issued, each station that meets the definition of a home shopping station and wishes to claim "must carry" rights should have 60 days to submit a certified showing of its public service record. The Report and Order, of course, will have to give such stations adequate notice of the decisional standards and the nature of the showing required. Based on the showing each station made, the Commission would determine whether or not that station is serving the public interest and warrants "must carry" status. Failure to make a timely submission would result in denial of "must carry" status.

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COMMENTS OF KPST-TV

Pan Pacific Television, Inc. ("Pan Pacific"), operator of Television Station KPST-TV, Channel 66, Vallejo, California, submits the following comments on home shopping station issues raised under the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") by the Commission's Notice of Proposed Rulemaking, FCC 93-35, released January 28, 1993 (the "NPRM").

A. Overview of KPST-TV

1. KPST-TV, which serves the San Francisco ADI television market, began operating in 1986. From the outset, the station has been affiliated with the Home Shopping Network ("HSN"). However, unlike many HSN affiliate stations, KPST-TV is not

owned in any part by HSN. Rather, it is 100% locally owned by Chinese Americans.^{1/}

the overwhelming majority (67%) of Chinese speaking residents in the Bay Area.^{2/}

4. To appreciate KPST-TV's public service contribution, The Commission must first understand a fundamental reality: KPST-TV could not financially afford to provide this very important service to the Chinese-American community without the revenues the station receives from home shopping programming. During the many years that KPST-TV's initial application was pending before the Commission, the cost of the necessary broadcast equipment and the cost of syndicated programming increased greatly. This left KPST-TV enough capital to build the station, but not enough to purchase programming. The station survived only because HSN supplied programming at no cost and paid sufficient affiliate compensation to meet operating expenses. Thus, apart from the public benefit of home shopping programming in its own right, HSN's home shopping service is now making possible 21 hours of prime time Chinese language programming per week over KPST-TV in the Bay Area.

5. Before describing more fully the nature of KPST-TV's programming, we first address some of the questions raised by the NPRM.

^{2/} See "KPST-TV Viewer Survey," appended hereto as Tab 1.

the week. The evening prime time hours would be those specified

11. We believe that this definition reasonably implements the intent of Congress in enacting Section 4. Moreover, it recognizes that breadth of exposure to audiences is realistically as significant as mere total broadcast hours in defining the effective service of a television station.

**C. The Statute Requires the FCC To Review
Each Home Shopping Station Individually**

12. The NPRM at ¶11 seeks comment on whether the 1992 Cable Act contemplates or mandates individualized reviews of home shopping stations to determine whether they operate in the public interest. However, the NPRM tentatively expresses the contrary view, i.e., that "a general rulemaking judgment as to this class of stations as a whole" is appropriate. Id. In our view, as explained below, the 1992 Cable Act permits a general judgment that home shopping stations as a class do serve the public interest, but precludes a general judgment that such stations do not serve the public interest. An adverse determination as to any station must be based on an individualized review of that station's public service performance.

13. Section 4(g) of the 1992 Cable Act states in pertinent part (emphasis added):

"In the event that the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the Commission shall qualify such stations as local commercial television

for purposes of subsection (a). In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming...."

The key phrase is "one or more." The only rational construction of this phrase is that Congress contemplated that different judgments could be reached for different home shopping stations. By definition, a uniform judgment could not be made about "one or more" such stations; a uniform judgment could only be made about "all" such stations.

14. Since individualized determinations are contemplated, the next question is whether they are mandatory or whether the Commission has discretion to opt for a generalized judgment instead. On this point, we believe that the Commission clearly may conclude, as a matter of generalized judgment, that home shopping stations do serve the public interest. Such a conclusion could be based on general considerations unrelated to the specific circumstances of particular stations. Those general considerations might include the benefit to the public of television home shopping as a program service, the popularity of home shopping programming among viewers generally, the importance of competition to nonbroadcast home shopping services, and other public interest factors. If the Commission concluded on the basis of such general considerations alone that home shopping stations as a class do serve the public interest,

then further inquiry and station-specific determinations would be superfluous. Since Congress plainly would not have mandated a superfluous exercise, a generalized judgment is permissible in these circumstances.

15. However, if home shopping stations are not generally adjudged as a class to serve the public interest, then individualized reviews must be made to determine whether any given home shopping station nonetheless serves the public interest for reasons other than its home shopping programming. Home shopping stations, like all other television stations, are obligated to serve their communities. Particular home shopping stations may meet that obligation just as well with public service programming as conventionally-formatted stations do. Indeed, some home shopping stations may provide more public service programming than other stations do. For the Commission simply to presume otherwise would be arbitrary.

16. Nothing in the 1992 Cable Act indicates that Congress intended the Commission to adopt such an arbitrary presumption. Moreover, a fundamental policy of the Communications Act is to encourage local public service broadcasting. That policy would be undermined if the public service performance of a home shopping station were ruled not relevant to whether the station was operating in the public interest. Without clear indication of a contrary intent, the 1992 Cable Act should not be given a construction at odds with an important policy of the

Communications Act. Thus, properly construed, the 1992 Cable Act precludes a blanket judgment that home shopping stations do not serve the public interest. That assessment must be made station-by-station, taking into account the individual public service record of each.

17. The NPRM at ¶11 seeks comment on the process by which such individualized determinations should be made. We propose the following procedure.

(a) The Commission's Report and Order in this rulemaking should articulate the public service standards by which home shopping stations will be judged under Section 4(g) of the 1992 Cable Act. Every television station that meets the definition of "home shopping station" (as defined in the Report and Order) and wishes to have "must carry" status would submit within 60 days (unless it had already submitted) a written showing of its public service record during the past two years. (New stations with no operational history would describe their proposed public service programming and activities.) Failure to make a timely submission would result in denial of "must carry" status.

(b) Public service record for this purpose would include all programming and other station-related activities (such as community ascertainment efforts, community outreach activities, and the like) that, in a license renewal context, would be relevant to a renewal expectancy under Commission policy. Also relevant would be (non-shopping) foreign language or other

programming designed to meet special needs of viewers. The showing would not include any comparison with other stations, and such comparisons would not be relevant.

(c) The Commission would assess each station's showing according to the same criteria by which renewal expectancy would be assessed in a license renewal proceeding. If the showing would be sufficient to earn a renewal expectancy, the station will be granted "must carry" status; otherwise it will be denied "must carry" status.

D. KPST-TV's Programming

18. As stated above, KPST-TV broadcasts Chinese language programming from 7:00 p.m. to 10:00 p.m. -- the principal prime time viewing hours -- every evening of the week. These 21 hours constitute 12½ percent of the total broadcast week and, far more significantly, 75 percent of all prime time hours. Half of the Chinese language programming is news, commentary, public affairs, documentary, educational, informational, and other non-entertainment programming. Much of it is locally produced.^{3/} On the next page is a weekly grid showing each Chinese language program. Program descriptions follow on the ensuing pages.

^{3/} KPST-TV also broadcasts a locally produced one-hour program in English every Sunday morning focusing on religion and family life.

KPST-TV CH. 66 CHINESE PROGRAM SCHEDULE

EFFECTIVE: FEB. 1, 1993

	MON	TUE	WED	THU	FRI	SAT	SUN	
7:00PM 7:15PM	NEWS FROM CHINA						WOMEN	7:00PM 8:00PM
7:15PM 8:00PM	HUA SHENG OPERA HOUSE					HUA SHENG VARIETY SHOW		
8:00PM 8:30PM	KPST-TV INTERNATIONAL NEWS						NEWS FROM TAIWAN	8:00PM 8:30PM
8:30PM 8:55PM	NEWS FROM TAIWAN				NEWS COMMENTARY	NEWS FROM TAIWAN	EXOTIC	8:30PM
8:55PM 9:00PM	LEGAL FORUM	TAX FORUM				FACE TO FACE		
9:00PM 10:00PM	KPST-TV DRAMA SHOWS						CHINA	9:15PM
							WHO'S WHO ON T.V.	9:15PM 9:30PM
							HIGH PLACES (RELIGIOUS)	9:30PM 10:00PM

19. News From China. 15 minutes daily, Monday-Saturday. National and local news of Mainland China, produced in part by China's Central TV and in part by Shanghai TV.

20. News From Taiwan. 25-30 minutes daily, Monday-Sunday. Comprehensive satellite newscast covering news of Taiwan, produced by the three television stations in Taiwan.

21. KPST-TV International News. 30 minutes daily Monday-Friday, 20 minutes on Saturday. International and U.S. news, utilizing satellite feeds provided by ABC, WTN (World Television News), and ABC affiliate stations throughout the U.S. The program is produced by KPST-TV, which assembles and edits material from the feeds and employs four full time employees to

American certified public accountant, designed to educate Chinese-Americans about tax matters in the United States.

27. Women Women. One hour on Sunday. A talk show produced in Taiwan focusing on the role of women in society.

28. Exotic China. One hour and 15 minutes on Sunday. Syndicated informational and documentary programs about China.

29. High Places. 30 minutes on Sunday. A religious program produced by the San Francisco Chinatown Corps of the Salvation Army.

30. KPST-TV Drama Shows. One hour daily, Monday-Saturday. Light drama program series, produced mainly in Taiwan or Hong Kong.

31. Hua Sheng Opera House. 45 minutes daily, Monday-Friday. Light drama program series, produced by various television stations and program producers in Mainland China.

32. Hua Sheng Variety Show. 45 minutes on Saturday. A variety program, produced in Mainland China, featuring singing, dancing, acrobatics, short drama, Chinese opera, and local operas.

33. Public Service Announcements. KPST-TV also broadcasts a variety of public service announcements (PSAs) in Chinese (in

addition to the many PSAs it broadcasts in English during the home shopping portions of its programming).

34. The importance of KPST-TV's Chinese language programming service is evident in the findings of a comprehensive public survey recently undertaken by KPST-TV among Chinese-speaking residents in the Bay Area. The survey was in the form of a written questionnaire published in the four major daily Chinese language newspapers in the Bay Area over a one-month period in October-November 1992 which generated more than

the station has received for its Chinese language programming from members of the public. While it is impractical to translate all such communications and submit them with these Comments, some examples are submitted in Appendix 2. Among the comments of viewers are:

-- "I [would] like to thank [you] for serving the Chinese community of the Bay Area. You have my sincerest respect for doing so much."

-- "I watch your 'News Commentary' every week. You have a very comprehensive grasp of all problems and issues that we face today. I think you have a profound and positive impact on society."

36. KPST-TV's Chinese language programming is clearly very important to Chinese-American viewers who receive it. However, this programming is unavailable as a practical matter to a large segment of the population because KPST-TV is generally not carried on cable. Approximately 68% of TV households in the San Francisco market subscribe to cable. The practical difficulty faced by the subscriber in switching from cable to over-the-air reception effectively shuts KPST-TV out of cable homes. Indeed, KPST-TV receives calls almost daily from cable subscribers asking how they can get KPST-TV. The public interest is not served when an important program service like that offered by KPST-TV is, for all practical purposes, unavailable to two-thirds of the public.

D. Conclusion

37. From the foregoing, it is clear that KPST-TV is one station with a general home shopping format that unquestionably, in the words of Section 4(g) of the 1992 Cable Act, "serv[es] the public interest, convenience, and necessity." Under the definition we propose in ¶8 above, KPST-TV would not be classified as a station "predominantly utilized for the transmission of" home shopping programming, because it devotes 75 percent of its prime time hours every week to non-home shopping programming. However, even if KPST-TV were defined as a home shopping station, the Commission could not possibly find, in light of the information presented here, that KPST-TV does not serve the public interest.

38. That conclusion necessarily leads to the following

D. Conclusion

37. From the foregoing, it is clear that KPST-TV is one station with a general home shopping format that unquestionably, in the words of Section 4(g) of the 1992 Cable Act, "serv[es] the public interest, convenience, and necessity." Under the definition we propose in ¶8 above, KPST-TV would not be classified as a station "predominantly utilized for the transmission of" home shopping programming, because it devotes 75 percent of its prime time hours every week to non-home shopping programming. However, even if KPST-TV were defined as a home shopping station, the Commission could not possibly find, in light of the information presented here, that KPST-TV does not serve the public interest.

38. That conclusion necessarily leads to the following broader conclusion: the Commission cannot make a blanket judgment under Section 4(g) that home shopping stations as a class do not serve the public interest. If at least one home shopping station does serve the public interest (as KPST-TV plainly does), then a universal judgment to the contrary is patently invalid.

39. All of this demonstrates that the Commission cannot make any adverse determinations about home shopping stations without first examining each such station's individual record. Each station must be given the opportunity, with adequate

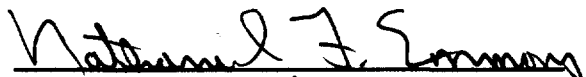
notice, to submit an individualized showing. Moreover, the Commission will have to define in advance the standards that stations must meet and the showing they must make in order to qualify as "serving the public interest, convenience, and necessity" within the meaning of Section 4(g). Failure to give stations adequate notice of what is required would invalidate any ensuing adverse determinations that the Commission made and would lead to judicial reversals.

40. In sum, the Commission has only two alternatives in this proceeding: (a) it may reasonably conclude that home shopping stations as a class do serve the public interest; or (b) if unable to make that universal judgment, it may define the applicable standards and establish a procedure by which each home shopping station will submit a showing and be judged individually. Any other approach, in our view, would be arbitrary and thus unlawful.

Respectfully submitted,

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APPENDIX 1



KPST-TV VIEWER SURVEY

A profile of KPST—TV viewers of Chinese programs